Filed 12/8/03 In re S.H. CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re S. H. et al., Persons Coming Under the Juvenile Court Law.	
KERN COUNTY DEPARTMENT OF HUMAN SERVICES, Plaintiff and Respondent, v. SAMANTHA H., Defendant and Appellant.	F043601 (Super. Ct. Nos. JD090854, JD090855, JD090856) **O P I N I O N**

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Peter A. Warmerdam, Juvenile Court Referee.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

B.C. Barmann, Sr., County Counsel, and Susan M. Gill, Deputy County Counsel, for Plaintiff and Respondent.

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*Before Buckley, Acting P.J., Cornell, J., and Gomes, J.

Samantha H. is the mother of three girls who as juvenile dependents have been in long-term foster care since June 2002. Appellant challenges the June 2003 denial of a petition she brought to reopen reunification services or return the children to her care. We will affirm.

PROCEDURAL AND FACTUAL HISTORY

In March 2000, the Kern County Superior Court adjudged appellant's three daughters, born between 1994 and 1998, dependent children and removed them from her custody. Appellant suffered from mental illness, which impaired her ability to provide adequate and appropriate care for the children. She had not been compliant with her psychotropic medication and she failed to refill her prescriptions.

By May 2001, appellant made sufficient progress towards reunification that the court returned the children to her custody subject to family maintenance services. However, her circumstances worsened to the point that respondent Kern County Department of Human Services (the department) re-detained the children in the following year. The court eventually terminated reunification services in June 2002. It also selected long-term foster care as a permanent plan for the children as it was unlikely they would be adopted.

In mid-March 2003, appellant's attorney filed a section 388 petition requesting that the court return custody of the girls to appellant under family maintenance services or reinstate reunification services. According to the petition, appellant completed her previously ordered reunification plan, maintained regular visits, and had a proper home for the children. Attached to the petition were appellant's October 2002 individual program plan developed through the Kern Regional Center (KRC), her signed authorization for release of her mental health records to child protective services, and certificates of completion allegedly awarded to appellant since June 2002 for four distinct parenting programs and one "'Life Crises' Solutions Group" offered through a county

mental health clinic. According to the petition, the requested modification would be in the children's best interests because they were bonded to their mother and to each other.

The court granted a hearing on the petition to be conducted in conjunction with a section 366.26 hearing for a fourth child born to appellant. The department filed a supplemental social study in opposition to appellant's section 388 petition.

The department acknowledged that appellant completed her former case plan, regularly visited with her children and shared a bond with her older daughters. There was no doubt that the three older girls loved and even adored their mother. Appellant had also acquired a two bedroom, two bath apartment although it was very marginal. It contained a bunk bed large enough for her three older children.

Nonetheless, the department also reported appellant, who was diagnosed with schizophrenia, paranoid type and was last known to be prescribed respiridol, did not feel she needed mental health counseling. It also contradicted appellant's best interest claim. Two of her older daughters required extra care due to mental health problems they suffered. They also struggled in school and required medication. However, appellant was unable to supervise all of her children at one time during visits. In fact, the mother's visits were supervised due to the mother's inappropriate remarks and behaviors. For instance, she had called her oldest daughter ugly and criticized the care she received. Also, the mother did not notice problems that the children had during visits and as a result the eldest child, who was only eight years of age, filled a parental role and took care of her younger siblings. The department in turn questioned appellant's ability to care for the children if the court returned them to her custody.

At the hearing, appellant testified in support of her section 388 petition. She described the different services she received through KRC, from job placement, cooking and cleaning programs to independent living classes. She could receive daily living services from KRC if the court returned the children to her. In particular, she claimed she had been involved in mental health counseling and was not taking any medication. She

further denied refusing to take any doctor-prescribed medication. She did not think it would be difficult to manage all of her children at the same time.

On cross-examination, she admitted she had in-home supportive services available to her in early 2002 when the department had to re-detain her children. Those services were to help with the cleaning, cooking and transportation.

Following argument on the matter, the court denied appellant's petition. In the process, the court commented as follows:

> "I'm even willing to assume at the moment that the home is acceptable without any reservations at this point; however, on the home, the issue is this: The children were there before. The mother was eligible to receive supportive services to maintain the home and maintain her family in that home. The mother, in effect, elected not to participate in those services. And as a result, the home deteriorated and the children were removed.
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> "In the meantime, the mother may have improved [the] status of the home to some degree, but certainly not in the superlative terms and certainly without the children in the home. And one of the basis [*sic*] apparently for the requested return is that the mother would have the services available to assist her. And the question certainly then is what would be different today as far as the mother's real willingness to comply with those service requirements and to obtain the benefit of those requirements to maintain the children in her home.
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> ". . . [T]he mother certainly comes to court today much more impressive in her demeanor, presentation, and in what she has accomplished. And those are all extremely positive things today, but the issue in regard to the 388 is not only what has the mother done as far as change of circumstance, but the issue is whether or not their requested modification is in the best interest of the children.
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> "The Court does not act in a vacuum in these cases. The Court is aware and has to be aware of the circumstances in the past of each and every case. Based on the past history of this case, it is unfortunate, but I cannot find that it is in the best interest of the children to grant the 388 as requested . . . ."

DISCUSSION

Citing the court's reference to "the past history of this case," appellant claims the court erroneously relied on that past history instead of whether circumstances had changed in evaluating her section 388 petition. She therefore contends the court applied the wrong test and, in doing so, abused its discretion. Appellant additionally argues the court abused its discretion because she met her burden of proving a modification was in her daughters' best interests.

First, to the extent appellant argues the court did not apply the correct legal test in evaluating her section 388 petition, we disagree. The record discloses otherwise. The court clearly understood the requirements of section 388, that is, a petitioning party must show a change of circumstance or new evidence as well as that the modification sought will promote the best interests of the child. (§ 388, subds. (a) & (c); Cal. Rules of Court, rule 1432(c).)

Further, the juvenile court's reasoning is not a matter for this court's review. (*Davey* v. *Southern Pac. Co.* (1897) 116 Cal. 325, 329.) It is judicial action and not judicial reasoning which is the proper subject of appellate review. (*El Centro Grain Co.* v. *Bank of Italy Nat. Trust & Savings Assn.* (1932) 123 Cal.App. 564, 567.) In any event, we see nothing wrong with the court's reference to past history. In order for the court to evaluate whether circumstances had changed, the court necessarily had to consider the case history.

Next, appellant assumes there was no question but that her circumstances had changed for the better. She characterizes her daughters' dependency as nothing more than a "'dirty house'" case and goes on to assert there was no longer any dispute that her home was appropriate. We frankly question appellant's description of the case, not to mention her claim of changed circumstances.

The court adjudged the children dependents in May 2000 due to the risk of harm appellant's mental illness posed, her failure to take her psychotropic medication and her

use of a unprescribed antidepressant. Appellant regained custody of her older daughters a year later subject to family maintenance services. However, she subsequently failed to participate in court-ordered mental health counseling and failed to take medications as prescribed. She alternately claimed she did not need the help and the mental health department would not see her. There were also persistent concerns about the quality of care she provided her children. At times, there was little food in the home and the children went hungry. Two of the children were supposed to be in therapy but appellant did not think it was necessary and did not take them. The condition of her home which, even with the assistance of several service providers, was marginal began to precipitously decline starting in January 2002. It was around this time that appellant no longer wanted to take advantage of the services associated with the home and she made herself unavailable to receive those services. The risk of harm was so great that in April 2002, the court re-detained the children.

Notably, as of the hearing on her section 388 petition, there was questionable evidence that appellant was participating in mental health treatment. At best, she had a certificate declaring she had completed a "'Life Crisis' Solutions Group" in February 2003 through the Kern County Mental Health Mini Clinic. She also points to her signed authorization for release of mental health information and argues that the department could have investigated the issue of treatment. However, we would remind appellant that it was her burden of proof to show changed circumstances, a burden that the court could properly conclude appellant failed to satisfy.

In any event, the court could properly conclude that appellant did not prove that modification of its prior orders would promote the children's best interests. While appellant's older children shared a bond with her and loved her, the record contained conflicting evidence that an order returning custody would be in their best interests, promoting their interest in permanence and stability. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Thus, the court did not abuse its discretion in this regard. The court

could properly reject as well appellant's alternative request for further services as not serving their best interests. At a post-permanency planning hearing, further reunification services may be provided for a period not to exceed six months. (§ 366.3, subd. (e).) Given appellant's questionable commitment to addressing her mental health problems, her past experience with services and the lack of any showing that within six months of services her daughters could be returned to a safe home environment, the court could find services were not in the children's best interests.

DISPOSITION

The order denying appellant's section 388 petition is affirmed.